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SUBJECT: TAIWAN: TIME TO MOVE FORWARD ON A BILATERAL INVESTMENT AGREEMENT

REF: A. A) TAIPEI 2505
1B. B) TAIPEI 2303

Summary

11. (SBU) U.S. investment flows into Taiwan are significant and accelerating. With both of Taiwan's presidential candidates calling for more economic opening to China, we expect even greater interest by U.S. firms in Taiwan. While U.S. firms see a number of investment opportunities in Taiwan, they cite critical problems with the current investment climate and are strong proponents of a bilateral investment agreement. While bilateral discussions on a possible bilateral investment agreement advanced this summer, they have progressed little since early August. We see such an agreement as key to further expanding U.S. access in a number of major sectors in the Taiwan market.

U.S. Direct Investment Increasing Fast

12. (U) Taiwan, which attracted US\$16 billion in U.S. direct investment through 2006, remains a major destination for U.S. investment. In 2006 alone, U.S. investments in Taiwan increased by more than US\$1.5 billion, according to USG figures. The actual number is probably larger, since U.S. firms are also likely investing in Taiwan via subsidiaries outside the U.S. These investments are not captured in these figures. (ref A)

13. (U) This year, U.S. direct investment appears to be accelerating dramatically. Although we do not have U.S. data split out from aggregate figures, in the first nine months of this year, Taiwan has attracted \$10 billion in foreign direct investment (from all sources worldwide). According to local investment contacts a significant portion is from U.S. investors.

14. (SBU) We expect that these numbers will continue to grow over the next few years. Regardless of who wins the election, next May will bring a new Taiwan president with a more open, pragmatic attitude toward cross-Strait economic integration. Improved cross-Strait business links will reinforce Taiwan's attractiveness as a destination for U.S. investment, and we are likely to see an upswing in investment activity and business opportunities for U.S. firms.

Problems with the Investment Climate

15. (U) Although Taiwan's investment climate is relatively open to foreign investment compared with many economies in the region, U.S. firms confront specific regulatory issues that limit U.S. investors' ability to take full advantage of business opportunities in Taiwan. In a number of sectors,

Taiwan has statutory limits on the participation of foreign investors. Restricted lines of business include telecommunications, radio and television broadcasting, electricity, gas and water supply, air and water transportation, air cargo and catering services, airport ground services, truck leasing and rental, and parts of the educational sector.

¶6. (SBU) Outside of these restricted sectors, Taiwan's investment climate is sometimes less than ideal. Based on the difficulties many U.S. and other foreign investors are having in obtaining approvals, Amcham has expressed concern about the transparency and predictability of Taiwan's investment approval process.

¶7. (SBU) The most high-profile recent case is Carlyle Group's failed bid for ASE, the world's largest semiconductor packaging and testing firm. The regulator insisted that differences over price scuttled the deal, but the deal fell through only after the regulator delayed the deal for months.

This was likely due in part to the political sensitivity of one of Taiwan's leading high tech firms being bought by foreigners and facing the possibility of de-listing from the Taiwan Stock Exchange. In another case, a cable television investment was recently approved, but only after a six month delay. Many of Taiwan's relatively new regulatory commissions, not the relatively more experienced bureaucracy, Amcham reps argue, are causing these problems. They have claimed that the commissions "operate by press conference, not by regulation."

Other Problems on the Agenda

¶8. (SBU) Amcham is a strong advocate of a bilateral investment agreement and hopes that bilateral investment

discussions will provide a context in which to raise a number of regulatory difficulties faced by U.S. firms. These issues include:

--Industry associations, without foreign participation, exercise regulatory power. Taiwan industry associations, such as the Bankers Association or the Securities Investment Trust and Consulting Association, have been given regulatory power to supplement official Taiwan regulators with respect to approval of financial products, sanctions for regulatory violations and other matters. Foreign firms are frequently barred from leadership positions in these associations and sometimes even from membership. U.S. firms have charged that association leaders routinely formulate protectionist policies at closed-door meetings with Taiwan officials.

--Limits on Capital Outflows. Although Taiwan's central bank denies any such activity, U.S. financial services firms argue that the bank uses its political leverage to informally "discourage" American companies from providing legally-permitted financial services. New offshore investment funds registrations are delayed arbitrarily, and the marketing of global investments is actively discouraged. U.S. firms have a significant competitive advantage in managing offshore portfolio investments. (ref B)

--Prohibition of PRC shareholders. Taiwan prohibits any direct or indirect investment by a company having PRC shareholders. U.S. firms applying for approval of a new investment are often required to certify that none of its beneficial owners is a PRC citizen or company. A U.S. publicly listed company has no way to control or even to know, who owns its shares.

--Visas and Work permits for key staff and managers. The Council of Labor Affairs informally requires that a company employ at least five Taiwan nationals for every non-citizen it wishes to hire. Firms are also unable to hire foreign staff with less than two years of experience, which means that firms can not hire recent MBA graduates from abroad. Significant barriers exist for companies wanting to bring PRC citizen employees to Taiwan to work or as short-term business

visitors. This is a serious challenge to any firm with an integrated regional operation.

Moving Forward on a BIA

¶9. (SBU) The proposed bilateral investment agreement (BIA) is the centerpiece of our efforts to expand market access and business opportunities for U.S. firms under TIFA. Despite encouraging progress earlier in the year, in which Taiwan agreed in principle to the U.S. model agreement and tabled a draft list of non-conforming measures (NCMs), recent progress has been slow. Taiwan submitted an initial list of proposed NCMs on June 15. Our last bilateral exchange occurred on August 2 via DVC. Following that meeting, Taiwan submitted a revised NCM list on August 10. There has been no substantive exchange since that time. Washington has yet to comment on Taiwan's draft list of NCMs.

¶10. (SBU) We are concerned that the current pace of preparation and exchange will not allow our business constituency to take full advantage of the opportunities likely to be offered with the advent of the new Taiwan administration. We would therefore like to work closely with Washington to explore strategies for moving the BIA process forward, possibly to include:

--accelerating the completion of the NCM review in Washington,

--scheduling a DVC before the Christmas/New Year holidays to address Taiwan's NCMs and other pending U.S. concerns, and/or

--arranging a visit to Taiwan, probably in January, by USTR, State, and other Washington-based staff to discuss investment concerns with Taiwan and U.S. business counterparts in more detail.

Comment

¶11. (SBU) No one from State or USTR has visited Taiwan to address TIFA-related issues since June. We think that an interagency visit in the next month or two would be useful, including by many of those new to the Taiwan account from USTR and State. In addition to finding a way forward on BIA discussions, such a visit would be most welcome and add traction to our efforts to advance the TIFA process in other areas.

YOUNG